

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

DYLON ROCKWELL, o/b/o)
WILLIE C. HUMPHREY (deceased),)
)
Plaintiff,)
)
vs.) Case No. CIV-09-415-D
)
MICHAEL J. ASTRUE, Commissioner)
of the Social Security Administration,)
)
Defendant.)

ORDER

Before the Court is Plaintiff's Motion for an Award of Attorney's Fees Pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d) [Doc. No. 22]. Plaintiff seeks an award of fees in the amount of \$4,782.70 for 28.3 hours of work performed by his attorney on the case. Plaintiff is the prevailing party in this action under 42 U.S.C. § 405(g) by virtue of the Judgment and Order of Remand entered April 9, 2010. The Commissioner has filed a response to the Motion stating that he does not oppose the fee request, so long as any award is paid to Plaintiff rather than his attorney.

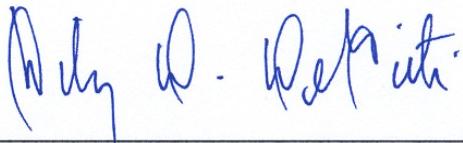
See Astrue v. Ratliff, No. 08-1322, 2010 WL 2346547 (U.S. June 15, 2010) (to be published); *Manning v. Astrue*, 510 F.3d 1246, 1255 (10th Cir. 2007), *cert. denied*, 129 S. Ct. 486 (2008).

After consideration of the law, the record, and the arguments of the parties, the Court finds: (1) the Commissioner's position was not substantially justified; (2) Plaintiff is entitled to attorney's fees under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d); and (3) the amount of attorney's fees requested is reasonable.

IT IS THEREFORE ORDERED that Plaintiff's Motion is GRANTED. The Court orders an award of attorney fees to Plaintiff pursuant to the Equal Access to Justice Act in the amount of \$4,782.70. Should an additional fee award under 42 U.S.C. § 406(b) subsequently be authorized,

Plaintiff's attorney shall refund to Plaintiff the smaller amount as required by *Weakley v. Bowen*, 803 F.2d 575, 580 (10th Cir. 1986).

IT IS SO ORDERED this 12th day of July, 2010.



TIMOTHY D. DEGIUSTI
UNITED STATES DISTRICT JUDGE